

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.8.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 405 of 2014

*K.Chandramohan

.. Petitioner

Versus

V.Mythili

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the judgment of the learned Sessions Judge of Nilgiris at Udhagamandalam in Crl.RC.No.3 of 2013 dated 17.12.2013 in reversing well considered judgment in Maintenance Case No.12 of 2007 on the file of the Judicial Magistrate, Udhagamandalam dated 27.12.2012 and allow the revision petition.

For Petitioner : Mr.Arokiamaniraj

For respondent : Mr. M.Muthupandian

ORDER

This Criminal Revision has been filed against the order dated 17.12.2013 passed by learned Sessions Judge of Nilgiris at Udhagamandalam in Crl.RC.No.3 of 2013 in reversing the judgment dated 27.12.2012 in Maintenance Case No.12 of 2007 on the file of the Judicial Magistrate, Udhagamandalam.

2. The respondent has filed a petition in M.C.No.12 of 2007 under Section 125 of the Criminal Procedure Code praying for maintenance at the rate of Rs.5,000/- per month each to her and her minor son and the same was partly allowed and the claim of the respondent herein was dismissed and the maintenance of the minor son by the petitioner herein until the age of majority i.e for period of 9 months and 19 days from 25.7.2007 to 15.5.2008 was allowed. The quantum was fixed at Rs.7,000/- and the petitioner was directed to make payment of the said sum multiplied into 9 months and 19 days within two months. Aggrieved against the refusal of grant of maintenance to respondent herein, the respondent/wife preferred criminal revision in CRL.RC.No.3 of 2013 before the Sessions Judge, Nilgiris at Udhagamandalam and the same allowed by setting aside the order of trial Court negating the claim of maintenance amount of Rs.5,000/-to the respondent/wife and the petitioner herein/husband was directed to pay Rs.5,000/- p.m. to the respondent/wife on or before 10th of every English Calendar Month. Aggrieved over the said order, the petitioner/ husband has filed the present revision.

3. The learned counsel appearing for the petitioner / husband would contend that the order of the first appellate court is erroneous and it is liable to be interfered with. It is further submitted that the trial court, after taking into consideration the

fact that the respondent/wife has voluntarily left the matrimonial home, has rightly rejected the claim of maintenance. It is also submitted that though the respondent/wife left the matrimonial home even in the year 1997, she has not chosen to take any steps from 1997 onwards. It is the submission of the learned counsel for the petitioner that the respondent/wife is working in Public Sector undertaking company and is enjoying her life by availing all the benefits and concession provided by the Government. It is also submitted that the petitioner is aged about 67 years old and therefore, some leniency may be shown against the petitioner.

4. The learned counsel for the respondent/ wife submitted that the respondent/wife is not working and she was dismissed from service even during March 1992, as she took leave unauthorisedly. It is submitted that the respondent/wife has challenged the order of dismissal before this Court and this Court also confirmed the order of dismissal passed by the Government. It is also submitted that the petitioner and the respondent were living together upto 1997 and that the petitioner/husband was well aware of the dismissal of service of the respondent/wife and, therefore, the statement made by the petitioner/husband that the respondent/wife is still working and is enjoying her life by availing all the benefits and concession provided by the Government is utter false. It is the submission of the learned counsel for the respondent/wife that the petitioner and the respondent lived together in joint family till 1997 in Delhi at the house of the petitioner with his parents, sisters and brother and due to some misunderstanding and harassment of the members of the joint family, the respondent / wife left the marital home in the year 1998. It is submitted that the petitioner himself has admitted that the petitioner's son was brought up by the respondent only at her cost and he has not paid any amount towards expenses of his son. Therefore, the learned counsel for the respondent submitted that the meager sum of Rs.5000/- alone was awarded by the first appellate Court and, therefore, the same need not be interfered with.

5. I heard the learned counsel for both sides and perused the materials available on record.

6. The main ground raised by the petitioner herein is that as the respondent/wife is working in Government undertaking company, she cannot claim any maintenance.

7. It is seen from the records that by order dated 27.12.2012 while granting maintenance to the son of the petitioner herein in M.C. No. 12 of 2007, the trial court refused to grant maintenance to the respondent/ wife holding that she voluntarily left the matrimonial home and that she has not taken any steps to make reunion with the petitioner. However, in the revision, the first appellate Court reversed the order of the trial Court and directed the petitioner to pay maintenance at Rs.5,000/- per month to the respondent/wife also. As rightly pointed out by appellate Court, the respondent/wife left her job even in the year 1990 and she lived with the petitioner / husband till 1997. The petitioner has also admitted that she left the matrimonial home only in the year 1997. Therefore, it is clear that the petitioner/ husband knows very well that she is not working. Even otherwise, merely because the wife is

working that by itself cannot be a ground to deny maintenance.

8. Further, the petitioner himself has produced the income tax records wherein, it is stated that he was earning Rs.99,721/- per year. Since the petitioner/husband is running a pharmacy distributor company and thereby earning considerable amount, he is liable to pay maintenance to the respondent / wife. Therefore, the order of the Appellate Court granting maintenance at Rs.5,000/- per month is confirmed.

9. In so far as the arrears amount payable by the petitioner to the respondent/ wife towards maintenance is concerned, the learned counsel for the petitioner seeks indulgence of this Court.

10. Considering the fact that the petitioner is aged about 67 years old, I am inclined to show some lenience in favour of the petitioner. Accordingly, insofar the arrears amount payable by the petitioner to the respondent/wife are concerned, the petitioner is directed to pay at the rate of Rs.4,000/- p.m. instead of Rs.5,000/- p.m from the date of filing of the petition to till date, within a period of three months from today.

11. It is needless to pay that the petitioner shall continue to pay the maintenance amount at the rate of Rs.5,000/- p.m. on or before 5th of every English Calendar month. Insofar as the maintenance regarding the minor child is concerned, the petitioner shall pay the maintenance as per the order of the trial Court.

With the above observation, the Criminal Revision case is dismissed.

Sd/-

Asst.Registrar

24.08.2015

***(Corrected based on the letter dated 25.9.2015 given by Mr.S.Arokia Mani Raj Advocate for the petitioner.)**

Sd/-

Assistant Registrar

25.9.2015

/true copy/

Sub Asst. Registrar

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To

1. The Sessions Judge of Nilgiris at Udhagamandalam
2. The Judicial Magistrate, Udhagamandalam.

+1 cc to Mr.S.Arokiamaniraj, Advocate, sr.40638

+1 cc to Mr.M.Muthupandian, Advocate, sr.40708

to be substituted
to the order
already
despatched on
7.9.2015

CrI RC No. 405 of 2014

ev(co)kra(24/08)